IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

WP(C).No. 4542 of 2006(N)

PETITIONER:

RAPAI, AGED 58 YEARS,
S/O. THOMA KUTTY, PADIKALA HOUSE,
AAVANISSERY P.O., THRISSUR.

BY ADV. SRI.K.A.SREEJITH

RESPONDENTS:

PRIYANKA TRADERS,
KURIYACHIRA, THRISUR REPRESENTED BY K.I. DEVASSY.

BY ADV. SRI.C.CHANDRASEKHARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO. 4542/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER OF THIS HONOURABLE COURT CRP. 1124/04.

EXT.P2:- COPY OF THE ORDER OF PROCEEDINGS OF THE EXECUTION COURT DT.8.12.2005.

/TRUE COPY/

M.SASIDHARAN NAMBIAR, J.

W.P.C.NO.4542 OF 2006 (N)

Dated this the 21 th day of December, 2006.

JUDGMENT

Petitioner is the judgment debtor and respondent is the decree holder. When the property was directed to be sold for realisation of the decree debt in E.P.53/03, petitioner filed C.R.P.1124/04. As per order dated 17.01.05, executing court was directed to reconsider the order for sale on the petitioner depositing Rs.30,000/- before one month from 17.1.05. This petition is filed after the property was sold and the case was posted for confirmation of sale to 8.12.05. As per order dated 30.6.06, petitioner was directed to deposit Rs.50,000/- before the executing court. According to learned counsel appearing for petitioner, the amount as directed by this court was deposited. The argument s of learned counsel appearing for petitioner was that inspite of the direction in Ext.P1 order, the value of the property was not considered by the executing court and therefore Ext.P2 order is to be quashed. The learned counsel also argued

that even though petitioner had contented before the executing court, that the whole property need not be sold and part of the property is sufficient, to satisfy the decree, that was not taken into consideration. Petitioner has not produced the order directing sale of the property. Instead Ext.P2 order passed by the court, after conducting the sale and posting the case for confirmation of sale alone was produced. That order will not show what transpired before that date petitioner did not produce the order, where under the objections were considered and the property was proclaimed for sale. Without producing the order and showing that the executing court either violated the provisions of Rule 64 or Rule 66 of Order XXI of Code of Civil Procedure or the directions of this court. Ext.P2 order cannot be set aside invoking the extra ordinary jurisdiction of this court under Article 227 of Constitution of India. Petitioner is at liberty to file an application before the executing court under Rule 90 of Order XXI of Code of Civil Procedure, raising the contentions with regard to the insufficiency of the value for which the property was sold as well as the objection based under Rule 64 or Rule 66

of Order XXI. If such an application is filed, executing court has to consider the same and pass appropriate order in accordance with law. Learned counsel appearing for decree holder submitted that decree holder needs only the decree debt inclusive of the cost and expenses incurred in the E.P and if petitioner pay that amount, property could be released to petitioner.

In such circumstances, it is provided that executing court may permit the judgment debtor to pay or deposit the entire amount due to decree holder inclusive of the expenses met by the decree holder in the E.P including the sale and purchase of the stamp paper if any for sale certificate and on such payment or deposit, pass appropriate order.

M.SASIDHARAN NAMBIAR,
JUDGE.

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